

State of South Carolina

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Workers' Compensation Commission

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Coverage Requirements and Statute References

Employers frequently contact the SC Workers' Compensation Commission to ask, "Do I need workers' compensation insurance?" Any employer in South Carolina who regularly has four or more workers full-time or part-time is required to have workers' compensation insurance. However, there are exceptions, as outlined in the SC Code of Laws Section §42-1-360. The exceptions include: agricultural employees; persons engaged in selling agricultural products; casual employees; state and county fair associations; federal employees; railroads and railway express companies, and employers who have a total annual payroll of less than \$3,000, regardless of the number of workers employed during that period. Also exempt are owner-operator drivers and certain commission-paid real estate agents, which meet specific threshold requirements.

Employer-employee relationship case law defines the fundamental test of employment relationship as the right of the employer to control details of an employees work. It is not actual control exercised, but whether there exists right and authority to control and direct the particular work or undertaking as to the manner of means of its accomplishment.

The courts have defined regularly employed as meaning employment of the same number of people with some constancy throughout a relevant time period. Employment situations are not always clear. Seasonal employment is a good example. In instances like this a Commissioner, based on the finding of fact, determines whether an employer regularly has four or more employees.

Employment is casual when it is not permanent or periodically regular but occasional or by chance and not a usual course of the employer's trade or business. Case law provides that if an employee is doing a task within the business, trade, or occupation of his employer, the employee is not casual, even if the duration of employment was brief and isolated. Part time employment is not casual in nature and is not included in the exceptions under Code Section §42-1-360.

The responsibilities of for workers' compensation insurance coverage for owners, contractors, and subcontractors may be found in the SC Code of Laws Sections 42-1-400 through 42-1-420. The relationship liability may be described as "upstream", in which the worker may seek relief for workers' compensation damages from an owner, contractor, or subcontractor as if the worker was an immediate employee. Section 42-1-450 allows workers to recover damages from one of the parties but not both.

In the event the Commission determines a coverage or compliance violation has occurred, all parties are entitled to a Order and Rule to Show Cause hearing before a Commissioner. However, failure of a party to appear at a hearing after having been properly served with an Order and Rule to Show Cause shall constitute an admission of the allegations. Questions regarding coverage requirements should be directed to Garry Smith, Compliance Division Director at 737-5707 or Gsmith@wcc.sc.gov.